IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4901 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOPALBHAI CHATURBHAI AMIN - Petitioner(s)

Versus

DISTRICT MAGISTRATE & 2 - Respondent(s)

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Appearance :

MR ANIL S DAVE for Petitioner No(s).: 1.

MR TS NANAVATI for Respondent No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 2.

Mr.P.D.Bhate, AGP for Respondent No(s).: 3.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 18/07/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 28.12.2004

passed by the District Magistrate, Gandhinagar in exercise of the powers conferred upon her under sub-section(1) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “dangerous person” and “property grabber” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to four criminal cases which are filed under the Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.

3. Learned advocate appearing on behalf of the petitioner detenu has raised manifold contentions. It is mainly submitted that when the detention order dated 28.12.2004 came to be passed, the petitioner was in judicial custody in connection with all four offences registered against him under the Indian Penal Code and the petitioner did not prefer any bail application before the competent court at the time of passing the order of detention and, therefore, at the time of passing the order of detention, the detaining authority had no cogent and credible material before him to show that the petitioner would prefer bail application before the competent court in all the cases and he would be released on bail by the competent court and, therefore, the conclusion arrived at by the detaining authority is based only on presumption. In support of his contention, he has relied upon the decision reported in AIR 2000 SC 3675 and submitted

that the satisfaction arrived at by the detaining authority on such presumption makes the order bad and illegal and, therefore, the impugned order of detention requires to be quashed and set aside. It is submitted that the detaining authority has verified the statements of witnesses mechanically and without application of mind and, therefore, in view of the principles and guidelines laid down by the Division Bench of this Court in the case of Bai Amina V/s State of Gujarat, reported in 22 GLR 1186, the privilege claimed under Section 9(2) of the Act is not genuine and, therefore, it reflects total non-application of mind on the part of the detaining authority and the subjective satisfaction arrived at by the detaining authority gets vitiated. He further submitted that the subjective satisfaction arrived at by the detaining authority to the effect that the petitioner detenu is a “dangerous person” within the meaning of Section 2(c) of the Act and that the petitioner is a “property grabber” within the meaning of Section 2(h) of the Act gets vitiated as the detaining authority has also referred to and relied upon the statements of five witnesses wherein it is observed by the detaining authority that it is quite clear that some farmers have deposed before the proposing authority but in absence of proper verification made by the detaining authority, the subjective satisfaction arrived at by the detaining authority gets vitiated. He, therefore, submitted that activities of the petitioner detenu alleged in the registered offences cannot be said to be prejudicial to the maintenance of law. He further submitted that if the first offence registered

against the petitioner is taken into consideration, then there is a delay of more than four months and if the last offence is taken into consideration, then the petitioner was in judicial custody and, therefore, there is no explanation in the grounds of detention as to why the impugned order of detention was passed on 28.12.2004 and in absence of any explanation, there is a delay of round about four months in passing the impugned order of detention and thus, live link between the prejudicial activities and passing the order of detention is being snapped and, therefore, the impugned order is bad in law which requires to be quashed and set aside. He submitted that the petitioner is denied the opportunity of making effective representation guaranteed under Article 22(5) of the Constitution of India. He submitted that there is inordinate delay in considering the representation by the State Government after its receipt and, therefore, the petitioner's right of making an effective representation under Article 22(5) of the Constitution of India is being infringed and, thus, the continued detention of the petitioner is illegal. He submitted that the detaining authority has not supplied the copies of the bail application upon which reliance is placed by the detaining authority while passing the detention order. In support of his contentions, he has relied upon the decision reported in AIR 1980 SC 1983. It is therefore, requested to quash and set aside the impugned detention order passed against the petitioner. In support of his submissions, he has relied upon the following authorities :

(1) Jagan Nath Biswas V/s The State of West Bengal reported in AIR 1975 SC 1516.

(2) Elesh Nandubhai Patel V/s Commissioner of Police, Ahmedabad City and others reported in 1997(1) GLH 381.

(3) Pradeep Nilkanth Paturkar V/s S.Ramamurthi and others reported in AIR 1994 SC 656.

(4) Amritlal and other V/s Union Government through Secretary, Ministry of Finance and others reported in AIR 2000 SC 3675.

(5) Ashadevi V/s K.Shivraj and another reported in AIR 1979 SC 447.

(6) M.Ahmedkutty V/s Union of India reported in (1990) 2 SCC 1.

(7) Koli Sureshbhai Balabhai Parmar V/s District Magistrate, Bhavnagar & Ors. Reported in 2000(2) GLH 540.

4.On the other hand, Mr.T.S.Nanavati, learned special P.P. has vehemently opposed this petition and has tried to support the order passed by the detaining authority. He submitted that the detaining authority, having satisfied in respect of the activities of the petitioner and with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, passed the detention order dated 28.12.2004. He submitted that it is true that at the time of passing the order of detention, the petitioner was in judicial custody but being satisfied in the manner and for the reasons stated in the grounds of detention and keeping in view the provisions and

requisite satisfaction as laid down under Section 3(2) read with Section 3(1) read with Section 3(4) and the explanation thereto, the order of detention dated 28.12.2004 came to be passed. He submitted that the detaining authority has passed the detention order after taking into consideration the propensity of the detenu and the apprehension expressed by the witnesses and having carefully examined the same, and, therefore, it cannot be said that the detaining authority has mechanically made the endorsement and the verification. He submitted that considering the offences registered against the petitioner, it clearly reveals that the petitioner is a “property grabber” as defined under Section 2(h) of the Act and has acted in a manner prejudicial to the maintenance of the public order. He submitted that the petitioner is a “dangerous person” as defined under Section 2(c) of the Act. He further submitted that non-disclosure of the names and addressed has not resulted into any violation of fundamental rights enshrined under Article 22(5) of the Constitution of India inasmuch as the detaining authority has exercised the privilege under Section 9(2) of the Act and has reached to the subjective satisfaction after due personal verification of the witnesses. He submitted that Criminal Misc.Application No.510, 511, 512 and 513 of 2004 were filed by the petitioner on 09.11.2004 and that the petitioner has made contradictory averments in the petition. He submitted that in the present case, it was not a case of likelihood of the petitioner applying for bail as the petitioner had, in fact, applied for

bail but there was likelihood that in such event, the petitioner is likely to be granted bail. He further submitted that the detaining authority has acted very promptly and there is no delay as alleged in the petition and in fact, there is a live link between the activities of the petitioner. He submitted that there is no infraction of the right guaranteed under Article 22(5) of the Constitution of India. He therefore submitted that in the event if the petitioner is so released on bail, there is likelihood of the petitioner indulging in the activities detrimental and prejudicial to the maintenance of public order and hence, the order of detention is passed against the petitioner. In support of his arguments, Mr.Nanavati has relied upon the following judgments :

(1) Ahamed Nassar V/s State of Tamil Nadu and others reported in 1999 SCC (Cri) 1469.

(2) Abdul Sathar Ibrahim Manik V/s Union of India and others reported in (1992) 1 SCC 1.

(3) Union of India V/s Paul Manickam and another reported in AIR 2003 SC 4622.

5. It is, therefore, requested to dismiss the present petition.

6. Heard the learned advocates for the parties.

7. Upon perusal of the grounds of detention, it clearly reveals that the petitioner is branded as “property grabber” and “dangerous person” as defined under Section 2(h) and 2(c) of the Act respectively. The detaining authority, while passing the detention

order dated 28.12.2004, has referred to and relied upon the four cases, more particularly, three registered caes being C.R.No.145/04, C.R.No.147/04 and C.R.No.153/04 registered with Gandhinagar Police Station and one case registered with Pethapur Police Station being C.R.No.129/04. The said four cases are pending trial before the competent court. It is submitted that the petitioner is involved in illegally grabbing the lands occupied by the State Government and the farmers within the area mentioned in the grounds of detention.

8. So far as the contention of the learned advocate Mr.Dave appearing for the petitioner that the privilege exercised under Section 9(2) of the Act by the detaining authority is not genuine is concerned, there is no substance in this argument in view of the fact that it reveals from the record that the detaining authority has taken into consideration the propensity of the detenu and the apprehension expressed by the witnesses and other matters relevant in the context and having carefully examined the same and satisfied that it is requisite not to disclose the names and addresses of the witnesses as it was considered to be against the public interest to so disclose.

9. So far as the next contention of the learned advocate appearing for the petitioner that the petitioner was in judicial custody in all four cases at the time of passing the order of detention and the petitioner did not prefer any bail application before the competent court at the time of passing the order of detention order is concerned, I do not find any substance in this argument also in view of

the fact that the detaining authority while passing the detention order has applied its mind regarding the fact that the petitioner is in judicial custody and this fact is also stated in the grounds of detention. It is well settled that subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision in this regard must depend on the facts of the particular case. In the present case, the detaining authority is satisfied on cogent and credible materials before him that there is likelihood of his release on bail and being so released, he is likely to indulge in prejudicial activity, then that would be one such compelling necessity to pass the detention order. From the record of the case, it appears that the detaining authority was not only aware that the detenu was in jail but also noted the circumstances on the basis of which the detaining authority was satisfied that the detenu was likely to be released on bail and continued to indulge himself in prejudicial activities.

10. It is also the next contention of the learned advocate appearing for the petitioner that there is a delay of about four months from 13.08.2004 in passing the detention order dated 28.12.2004. It reveals from the record that the detaining authority has acted very promptly. It is stated that the last verification of the statement of witnesses came to be verified on 30.10.2004 and, thereafter, the petitioner preferred application for bail before the Sessions Court and hence the detaining authority, having satisfied and considering the live link

between the activities of the petitioner and propensity of the petitioner to indulge in illegal activities, has passed the detention order. It is also required to be noted that the delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable, but the requirement by the law is that the delay must be satisfactorily explained by the detaining authority.

11.It is also the contention of the learned advocate appearing for the petitioner that the petitioner has been denied the opportunity of making an effective representation under Article 22(5) of the Constitution of India. It is submitted that taking into consideration the propensity of the detenu and the apprehension expressed by the witnesses and other matters and having carefully examined the same, it is decided by the detention authority not to disclose the names and addresses of the said witnesses as it was considered to be against the public interest to disclose the same. In this view of the matter, it cannot be said that the petitioner is denied the opportunity guaranteed under Article 22(5) of the Constitution.

12.It is also the contention of the learned advocate appearing for the petitioner that the petitioner has not been supplied with the copies of the bail applications preferred by the petitioner along with the grounds of detention. It is well settled that non-supply of documents relied upon in the grounds of detention is fatal to continued detention. It is required to be noted that the detaining authority

has referred to the factum that the petitioner had preferred the bail applications before the competent court and no where in the grounds of detention, it is referred to the fact that bail applications of the petitioner have been considered and hence the detaining authority was aware of the fact that the petitioner has approached the competent court seeking bail and hence there is likelihood that the petitioner would be released on bail and in the event that the petitioner is so released on bail, there is likelihood of indulging in the activities detrimental and prejudicial to the maintenance of the public order by the petitioner. Hence, non-supply of such documents does not, in any manner, deprive the petitioner of making effective representation under Article 22(5) of the Constitution of India. Once the bail applications not having been the documents taken into consideration by the detaining authority but the factum of the petitioner having approached the competent court seeking for bail having been considered by the detaining authority, the need to supply the same does not arise. It appears from the record that the grounds do not disclose that the detaining authority has relied upon any of these documents but on the contrary, the detaining authority was aware that the detenu was in custody and there is every likelihood of his being released on bail. It is, therefore, not necessary to supply the copies of the documents to which casual or passing reference is made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of

detention. It therefore, appears that failure to supply each and every document merely referred to and not relied upon will not amount to infringement of the rights guaranteed under Article 22(5) of the Constitution of India.

13. In view of what is stated above, the petition is dismissed. Rule is discharged. No costs. Direct service is permitted.

(SHARAD D DAVE, J)

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